

FOR THE WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION

FRANK SMITH JR.

Plaintiff,

v.

DIRECTOR, FEDERAL EMERGENCY  
MANAGEMENT AGENCY AND NFIP  
DIRECT SERVICING AGENT

Defendants

Civil Action No.

**COMPLAINT**

Plaintiff FRANK SMITH JR. by his attorney, and for its complaint against Defendant DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY (hereinafter “FEMA”) and NFIP DIRECT SERVICING AGENT (hereinafter “NFIP”) allege as follows:

**NATURE OF THE CASE**

This is a case of breach of an insurance contract covering flood loss to Plaintiff’s house arising out of Defendants’ failure to pay the correct amount of the damage done to Plaintiff’s house, which said damage was caused by flooding. for which Plaintiff seeks judgment against both named Defendants.

**THE PARTIES**

1. Plaintiff FRANK SMITH. is a major domiciliary of Ouachita Parish, State of Louisiana.
2. Defendant DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY is the Director of a government Agency designed and formed to handle flooding claims under policies of flood insurance it issued to individuals to cover damage to their property occasioned by flooding, and Defendant NFIP DIRECT SERVICING AGENT who, at all times mentioned herein was authorized to do and actually doing business in the State of Louisiana with the Secretary of State upon whom service of process may be

made, and at all times mentioned herein was the WYO company handling the policy of insurance in question in this Complaint.

### **JURISDICTION AND VENUE**

3. This Court may declare the rights and other legal regulations of the parties in this action under 42 U.S.C. section 4104

4. This Court has personal jurisdiction over Defendants and venue is proper in this District pursuant to 28 U.S.C. section 1331 and also under 42 U.S.C. 4072 This Court also has personal jurisdiction over Defendant consistent with the principles underlying the U.S. Constitution.

### **STATEMENT OF FACTS**

5. Plaintiff alleges that on or about April 13<sup>th</sup>, 2019, his house located at 1117 North 8<sup>th</sup> Street, West Monroe, Louisiana, flooded due to torrential rains and suffered damage to it, exclusive of its contents, in an amount in excess of the maximum insurance coverage, i.e. \$53,000.

6. Plaintiff alleges that he filed an appropriate claim with Defendant FEMA under a policy of insurances issued by said Defendant with Defendant NFIP DIRECT SERVICING AGENT being the WYO company handling said policy, said claim being appropriate since the policy in question covered flooding and having a period of coverage from April 27<sup>th</sup>, 2018 to April 27<sup>th</sup>, 2019, providing among other coverages liability limits for flood damage to the aforesaid dwelling of Plaintiff to be the sum of \$53,000, subject to a deductible of \$1500.

7. Plaintiff alleges that he received a letter from the Defendant FEMA dated June 21<sup>st</sup>, 2019 stating that all they were going to pay for the flooding damage to Plaintiff's house was \$6,950.85 after the aforesaid \$1500 deductible was applied namely \$8450.85 less Plaintiff's \$1500 deductible, but advising that Plaintiff could appeal; that decision which Plaintiff did via his duly authorized legal representative, Joe D. Guerriero.

8. Plaintiff alleges that since the damage to his house exclusive of damage to his contents exceeded the \$53,000 coverage as all attempts to obtain someone to repair the damage were rejected, he

thus obtained the opinion of a well-established Contractor with more than 35 years' experience who stated unequivocally that **the house was in fact unrepairable**, with the result that it needs to be torn down and completely rebuilt, **a fact bolstered by the City of West Monroe, Louisiana who has ordered the Plaintiff to demolish the house or it will (see attached Exhibit "A")**; therefore, Plaintiff, appealed this decision of Defendants, and in connection therewith he had his attorney send the notice of Appeal and accompanying documents to Defendants and followed up with a subsequent letter to said Defendants (See attached Exhibit "B" as though written herein in full), all of which were to no avail, as no reply was forthcoming from said Defendant.

9. Plaintiff further alleges that no action has been forth coming since his attorney sent the appropriate documentation thereto, and even though the letter of representation sent was one used by his attorney for over 57 years and never before challenged, the Defendant rejected both letters sent, and thus he was compelled to file this complaint; moreover Plaintiff avers that since he has not received any amount, much less the value to rebuild the house, Plaintiff desires and is entitled to judgment against both named Defendants for the policy limits of his insurance less his \$1500 deductible, namely in the amount of \$51,500 plus legal interest thereon from date of judicial demand and for all costs of this pleading.

10. Plaintiff further avers that the amount offered by the Defendants was without a doubt an offer made in bad faith and thus he desires and is entitled to reasonable attorney fees for his having to file this complaint and for all penalties allowed by law for the Defendants acting in bad faith.

#### **PRAYER FOR RELIEF**

WHEREFORE PLAINTIFF, LNC, prays for relief and entry of judgment by this Court as follows, to-wit:

A. That there be Judgment in favor of Plaintiff, Frank Smith Jr., and against Defendants, .DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY and NFIP DIRECT SERVICING AGENT in an amount commensurate with Plaintiff's losses, which Plaintiff contends is the value to rebuild the

house which said value exceeds the maximum amount of his policy of insurance; thus, Plaintiff seeks the sum of \$51,500.00 representing the policy limits less his \$1500 deductible.

- B. For an award of interest to the extent permitted by law; and for such other relief as the Court may deem just and proper.
- C. For an award of reasonable attorney fees and for all penalties allowed under the law for the Defendants acting in bad faith.

Dated: Nov. 7<sup>th</sup>, 2019,

Respectfully submitted,

Joe D. Guerriero/s/

Joe D. Guerriero – Bar Roll No. 06391  
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Attorney for Plaintiff – Frank Smith, Jr.

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION

FRANK SMITH JR.

Plaintiff,

v.

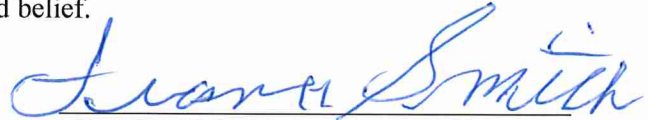
DIRECTOR, FEDERAL EMERGENCY  
MANAGEMENT AGENCY AND STATE  
FARM INSURANCE COMPANY

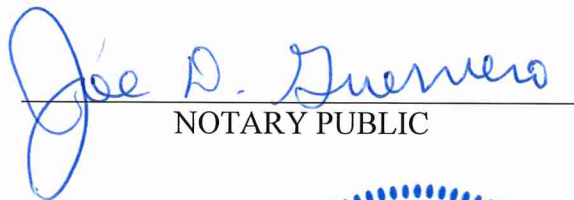
Defendants

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**AFFIDVAIT OF FRANK SMITH**

PERSONALLY CAME AND APPEARED, before me, the undersigned Notary Public, duly commissioned and qualified for the State of Louisiana, FRANK SMITH, who did depose and state under the penalty of perjury that all of the allegations contained in the Complaint filed herein are true and correct to the best of his knowledge, information and belief.

  
FRANK SMITH, Petitioner/Affiant

  
NOTARY PUBLIC

